

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ,
MARCUS MARTIN, NATALIE ROMERO,
CHELSEA ALVARADO, JOHN DOE, and
THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF
THEIR MOTIONS FOR EVIDENTIARY SANCTIONS AGAINST
DEFENDANT ELLIOTT KLINE A/K/A ELI MOSLEY**

Plaintiffs respectfully file yet another supplemental brief in further support of their April 3, 2019, Motion for Sanctions, ECF No. 457 (“First Sanctions Motion”), and December 6, 2019, Motion for Evidentiary Sanctions, ECF No. 601 (“Second Sanctions Motion”). Plaintiffs learned on February 10, 2020, that the third-party vendor was able to successfully access the email account CvilleReports@gmail.com by using Kline’s deplorabletruth@gmail.com account as a recovery email address. While being held in jail for civil contempt of Court, Kline submitted a sworn declaration that he attempted to use this precise recovery method and that it “did not work to recover anything.” Kline Resp. at 1, Jan. 7, 2020, ECF No. 625. Based on the vendor’s success in using Kline’s deplorabletruth@gmail.com email account to access CvilleReports@gmail.com, however, there can be no doubt that Kline has been caught in yet another lie to the Court about responsive documents he has withheld from Plaintiffs in discovery.

On January 6, 2020, Plaintiffs filed a submission with the Court identifying a fifth email account used by Kline that Kline had failed to disclose. *See* Pls.’ Supp. Br., Jan. 6, 2020, ECF No. 615. That email account was CvilleReports@gmail.com. *Id.* The Court held a telephonic hearing that day during which Kline testified under oath that “I’m almost certain that I did not create that email address or use that email address.” Hr’g Tr. at 15, Jan. 6, 2020, ECF No. 632; *see also id.* at 16 (“I do not believe, like I said, that that’s an email address that I set up and had access to. However, if I did, it would have the same access and password as the other email addresses that I’ve used. So I would be able to go right in and get access – give access to it if it’s an email address that I used. But I don’t believe it is an email address that I used.”). At the conclusion of the January 6, 2020, hearing, the Court ordered that Kline remain in the custody of the U.S. Marshal and be held in the Charlottesville jail. *Id.* at 38–39.

Later on January 6, 2020, after the hearing, Kline submitted a handwritten declaration he made under oath regarding his attempts to access to the CvilleReports@gmail.com email address. Kline Resp., ECF No. 625. He swore that “you can enter a recovery email for a forgotten password. I tried all 3 of my email addresses as the recovery email, and they did not work to recover anything.”¹ *Id.* at 1. Kline concluded that “the ‘cvillereports’ email address is not one I have credentials for after trying multiple ways to get into the account.” *Id.* at 2.

On January 8, 2020, Plaintiffs filed a submission with the Court to inform it of the compelling evidence that Plaintiffs had uncovered that Kline had lied under oath during the January 6, 2020, hearing when he denied knowledge of the existence of the

¹ Although he did not list them in his sworn declaration, Kline’s three email addresses are deplorabletruth@gmail.com, eli.f.mosley@gmail.com, and eli.mosley@identityevropa.com. Kline Dep. Tr. at 169, Aug. 7, 2019, ECF No. 601-1. Plaintiffs learned about a fourth email address, eli.r.kline@gmail.com, during Kline’s November 25, 2019 civil conspiracy hearing. Hr’g Tr. at 64, Nov. 25, 2019, ECF No. 600.

CvilleReports@gmail.com account. *See* Pls.’ Resp., Jan. 8, 2020, ECF No. 631. Specifically, Plaintiffs identified documentation that confirmed (contrary to Kline’s representations under oath during the hearing) that the email address was registered to Kline. *Id.* at 2–3. Plaintiffs also pointed out that Google’s “account recovery” feature indicated that the CvilleReports@gmail.com account was linked to both a phone number and an email address (the deplorabletruth@gmail.com account) that Kline conceded belonged to him. *Id.* at 3–5. Plaintiffs requested that the Court order that the third-party discovery vendor be authorized to attempt to obtain access to CvilleReports@gmail.com, to image the contents of that email address as well, and to produce such documents directly to Plaintiffs. *Id.* at 6.

On February 7, 2020, the Court granted Plaintiffs’ request and ordered “that the Third-Party Discovery Vendor may attempt to access the CvilleReports email address, image the contents of that email address, and produce such documents directly to Plaintiffs’ counsel, subject to the same terms concerning purportedly privileged documents as in this Court’s Order of January 22, 2020 (Dkt. 638 at 3).” Order at 4, Feb. 7, 2020, ECF No. 644. Plaintiffs provided the third-party vendor with the order. *See* J. Phillips Email to K. Kim, Feb. 7, 2020 (attached hereto as Ex. A).

On February 10, 2020, the third-party vendor informed Plaintiffs that its attempt to access the CvilleReports@gmail.com account through use of the deplorabletruth@gmail.com account as a recovery account was successful. *See* B. Williams Email to J. Phillips, Feb. 11, 2020 (attached hereto as Ex. B). Plaintiffs’ January 8, 2020, submission had cautiously noted that Kline’s January 6, 2020, submission under oath was “likely incorrect or untrue” because Google’s account recovery feature showed that the email address associated with CvilleReports@gmail.com begins with the same three letters and contains the same total characters as Kline’s primary email address, deplorabletruth@gmail.com. Pls.’ Resp. at 4, ECF No. 631. There can be no doubt now that

Kline's sworn statement was a lie. Kline has now been caught lying under oath numerous times regarding accounts and devices he used to create documents concerning the events at issue in this case. Notably, the lies always run in the same direction: each time he is confronted, Kline attempts to obscure the existence of or obstruct access to critical devices and accounts that he previously failed to disclose.

Plaintiffs reiterate their request that that the Court grant the First and Second Sanctions Motions and that the Court (1) deem the facts listed in the Sanctions Motions established; (2) deem authentic for purposes of Fed. R. Evid. 901 any documents that Plaintiffs have a good-faith basis to believe that Kline created, including all documents from the social media accounts listed in the Sanctions Motions, as well as any photographs taken by or depicting Kline; and (3) instruct the jury that Kline chose to intentionally withhold his documents, and that the jury may draw adverse inferences from that fact, including that Kline chose to withhold such documents because he was aware that such documents contained evidence that Kline conspired to plan racially motivated violence at Unite the Right.

Dated: February 12, 2020

Respectfully submitted,

/s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

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I further hereby certify that on February 12, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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